IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 54 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESH BABULAL - Appellant(s)
Versus
STATE OF GUAJRAT - Opponent(s)

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Appearance :
MR PM VYAS for the Appellant.
MS NANDINI JOSHI, APP for the respondent.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 16/06/2006

ORAL JUDGMENT

This appeal has been preferred against the order of conviction dated 1st January,1997 passed by Learned Additional Sessions Judge, Morbi in Sessions Case No.41

of 1995, whereby the present appellant has been convicted and sentenced to undergo rigorous imprisonment for 3 years and pay a fine of Rs.200/-, in default, 10 days' further imprisonment, for the offence punishable under section 363 of the Indian Penal Code.

The appellant is also convicted and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.300/-, in default, 15 days further imprisonment, for the offence punishable under section 366 of the Indian Penal Code.

The appellant is also convicted and sentenced to undergo rigorous imprisonment of 7 years' and pay a fine of Rs.400/-, in default, 20 days further imprisonment, for the offence punishable under section 376 of the Indian Penal Code.

2. Brief facts leading to the present case are as under:-

2.1 The prosecutrix, whose date of birth is 5th January,1981 was kidnapped by the appellant on 8th May,1995 to marry with the appellant and committed rape on her at various places as narrated in the complaint by the mother of the prosecutrix on 8th May,1995. Initially accused was not available. The accused was arrested on

16th May,1995. Thereafter, the investigation had been carried out and the charge sheet was filed. The appellant was prosecuted for the offences punishable under sections 363, 366 and 376 of the Indian Penal Code and upon the deposition of the prosecution witnesses and on the basis of the document on record, present appellant has been convicted and sentenced to undergo rigorous imprisonment of seven years' and pay a fine of Rs.400/-, in default, 20 days' further imprisonment for the offence punishable under section 376 of the Indian Penal Code. The age of the prosecutrix as on the date of the offence was 14 years, 4 months and 2 days.

2.2 Learned counsel for the appellant mainly submitted that there are lots of omissions and contradictions in the depositions of the prosecution witnesses. The prosecution has failed to prove beyond reasonable doubt, the offences punishable under section 376 of the Indian Penal Code and, therefore, the order passed by the Trial Court deserves to be quashed and set aside.

2.3 Learned counsel for the appellant submitted that the age of the prosecutrix was more than 16 years. The present case is a case of full consent by the

prosecutrix. On the contrary, it is the prosecutrix, who has lured the appellant, who is of the age of 20 years as on date of alleged offence. There is no antecedent of the present appellant. This aspect of the matter has not been appreciated by the Trial Court and, hence, the order passed by the Trial Court deserves to be quashed and set aside.

2.4 Learned counsel for the appellant submitted that the Trial Court has not appreciated the deposition of the prosecutrix, PW-3 at Exh-12 and, therefore, the order of conviction also deserves to be quashed and set aside. Learned counsel for the appellant has also submitted that Exhs-10 and 11 have also not been appreciated by the Trial Court, which reveals not the date of birth of the prosecutrix. In fact, Exh-10 and 11 are not revealing the date of birth of prosecutrix and, therefore also, the order passed by the Trial Court deserves to be quashed and set aside.

2.5 I have heard the Learned Additional Public Prosecutor for the State, who has submitted that looking to the documents and evidence on record, the order of conviction passed by the Trial Court is true, correct and in consonance with the facts and evidence of the present

case. The prosecutrix was a minor as on 8th May,1995 i.e. on the date on which, the complaint was filed. The birth date of the prosecutrix has been proved by the Narendrasinh Jadeja, PW-2 at Exh-9 by presenting the document at Exhs-10 & 11, which are Birth Certificate and Birth Register, respectively, which explicitly point out that there was a birth of female child. The parents of the prosecutrix have also supported the evidence, which are at Exh-10 and 11. The name of mother of the prosecutrix is Gomiben and name of the father of the prosecutrix is Sattabhai. These documents were of the year 1986. The names of parents have been referred in Exh-10 and 11. Thus, much earlier in point of time, the birth date of daughter of Gomiben and Sattabhai was entered into birth and death register, which was proved by Narendrasinh Balubha Jadeja, PW-2 at Exh-9. Thus, the prosecutrix was minor aged 14 years, 4 months and 2 days on 8th May,1995 Therefore, there was no question of consent, whatsoever arises, as per section 375 of the Indian penal Code. There are sufficient corroborations by the depositions of Dr.Nainadh Singh, PW 6 examined at Exh-16 and the Certificate issued by him and, therefore, the order passed by the Trial Court is absolutely true and correct and, may not be interfered by this Court.

3. Having heard the learned counsel for both the sides, looking to the evidence on record, the depositions of the prosecution witnesses and various documents, in my opinion, judgement and order dated 1st January,1997 passed by the Additional Sessions Judge, Fast Track Court, Morbi in Sessions Case No.41 of 1995 is absolutely true, correct and in consonance with the evidence on record and requires no interference by this Court, for the following facts and reasons:-

(i) Looking to the evidence on record, the prosecutrix was minor as on date of offence i.e. on 8th May,1995. Looking to the deposition of p.w.2 Narendrasinh Balubha Jadeja at Exh-9, he has proved the Birth Certificate and Birth Register, which reveals the date of birth of the prosecutrix. As per this witness, according to documents at Exhs-10 and 11, the date of birth of the prosecutrix is 5th January,1981 and, therefore, the date on which the offence was committed, she was minor and was aged 14 years, 4 months and 2 days. Therefore, concept of consent is not helpful to the appellant as per section 375 of the Indian Penal Code. Much time has been consumed in cross-examination for bring on record the consent of the minor prosecutrix. In this case as the prosecutrix was below the age of 16

years, the consent of the prosecutrix is of no use to the appellant. The offence of rape is said to have been committed even if the prosecutrix has given consent as she is below the age of 16 years as per section 375 of the Indian Penal Code. This aspect of the matter has been correctly appreciated by the Trial Court.

(ii) Looking to the deposition of the prosecutrix p.w.3 at Exh-12, it is proved beyond reasonable doubt by the prosecution that the appellant has committed the offence under sections 363,366 and 376 of the Indian Penal Code. The prosecutrix was minor aged 14 years and 4 months, she was kidnapped for marriage and, thereafter, the appellant committed the offence of rape more than once. Looking to totality of depositions, she is trustworthy witness. The prosecutrix has narrated in no uncertain terms the whole incident as to how the offence has been committed by the appellant. Nothing is shaken or taken away in the cross-examination of the prosecutrix. On the contrary, the cross-examination strengthens the examination-in-chief and proves the guilt of the present appellant. The prosecutrix has given clear deposition and once she is found a trustworthy witness, there is no need of any corroboration. Dr.Nainadhsingh has been examined as PW-6 at Exh-16, whose deposition is corroborative to

the complaint and the deposition of the prosecutrix. The Certificate given by the Doctor, which is at Exh-17 also makes explicitly clear that the present appellant has committed the offence under section 376 of the Indian Penal Code.

(iii) Looking to the deposition of the complainant–mother of the prosecutrix–Gomiben Sattabhai PW-1 at Exh-7, she has also narrated the incident and her deposition also involves the present appellant. Her version is also corroborative to the deposition of the prosecutrix – PW-3 at Exh-12. Thus, prosecution witnesses PW-1 at Exh-7, PW-2 at Exh-9, PW-3 at Exh-12 and PW-6 at Exh-16, have deposed in one breath. All these depositions along with Exh-10 & 11, lead to only one conclusion that the appellant has committed the offences under section 363, 366 and 376 of the Indian Penal Code.

(iv) The prosecution has also examined PW-9 & PW-10 – the police witnesses, who had recorded the complaint and carried out further investigation. There is no discrepancy, omission or contradictions in the prosecution witnesses. The evaluation of the evidence on

record made by the Trail Court, is absolutely true and correct. There is no error by the Trial Court in convicting the appellant under the provisions of the Indian Penal Code. Even the quantum of punishment inflicted upon the appellant is also in consonance with the guilt of the present appellant.

4. Looking to the facts and circumstances of the case and evidence on record, there is no substance in this appeal and, hence, the same is hereby dismissed.

(D.N.PATEL,J)

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